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6 Attorneys for Defendant  
7 UNITED PARCEL SERVICE, INC.

8  
9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA

11 DESDNIE HESS, individually and on behalf  
12 of all others similarly situated,

13 Plaintiff,

14 v.  
15 UNITED PARCEL SERVICE, INC., an Ohio  
corporation,

16 Defendant.

17 CASE NO. 21-CV-00093

18 **DEFENDANT UNITED PARCEL SERVICE,  
19 INC.'S NOTICE OF REMOVAL**

20 [Removal from the Superior Court of California,  
21 County of Alameda, Case No. RG20078425]

22 Action filed: October 30, 2020

1 **TO THE COURT, THE CLERK OF THE COURT, PLAINTIFF, AND ALL COUNSEL OF**  
 2 **RECORD:**

3 PLEASE TAKE NOTICE that Defendant United Parcel Service, Inc. (“UPS”), by and through  
 4 its undersigned counsel and pursuant to 28 U.S.C. § 1441, *et seq.*, and in accordance with 28 U.S.C.  
 5 § 1332(a) and (d), respectfully removes the above-captioned matter from the Superior Court of  
 6 California, County of Alameda, to this Court. Removal is proper for the reasons set forth below.

7 **I. BACKGROUND**

8 1. Plaintiff Desdnie Hess commenced this action on October 30, 2020, in the Superior  
 9 Court of the State of California for Alameda County. Decl. of Rachel Brass, Ex. A (“Compl.”).  
 10 Plaintiff served the Complaint on UPS on December 8, 2020. *Id.* ¶ 3 & Ex. A.

11 2. Plaintiff alleges that she is a California resident and worked for UPS as a Local Sort  
 12 Supervisor in Santa Maria, California, from “approximately October 2019 to May 2020.” Compl. ¶ 12.  
 13 Plaintiff alleges that, while working for UPS, she “incurred expenses during the pandemic when she  
 14 had no choice but to purchase supplies including masks and hand sanitizer.” Compl. ¶ 94. According  
 15 to her Complaint, UPS “failed to offer basic PPE to its employees while forcing them to work in  
 16 situations which put them . . . at tremendous risk from COVID-19.” Compl. ¶ 4. Plaintiff alleges that  
 17 these failures also include not implementing “physical distancing protocols or to structure the workday  
 18 and worksite in a way that makes it possible” and “fail[ing] to update ventilation systems.” Compl.  
 19 ¶ 55.

20 3. Plaintiff seeks to maintain this action as a class action. Compl. ¶ 60. Plaintiff defines  
 21 her putative class as “all current and former non-exempt workers employed by [UPS] throughout  
 22 California any time starting four years prior to the filing of this Complaint until resolution of this  
 23 action.” Compl. ¶ 61. Plaintiff’s proposed class includes “approximately 300 employees at the Santa  
 24 Maria location,” Compl. ¶ 48, and “thousands of workers throughout California,” Compl. ¶ 2.

25 4. Plaintiff asserts four causes of action on behalf of herself and the putative class: (1) a  
 26 cause of action for public nuisance under Cal. Civil Code §§ 3294, 3479, 3480, 3491, and 3493; (2) a  
 27 cause of action under California’s Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*;  
 28 (3) a cause of action for reimbursement of business expenses under Cal. Labor Code §§ 2800, *et seq.*;

1 and (4) a cause of action for declaratory judgment under Cal. Code Civ. Proc. §§ 1060, *et seq.* *See*  
 2 Compl. ¶¶ 21–27.

3       5. Plaintiff seeks “declaratory relief, injunctive, relief, and damages.” Compl. ¶ 90.  
 4 Specifically, Plaintiff seeks an injunction addressing the alleged acts and omissions underlying  
 5 “Defendant’s continuing creation and perpetuation of a public nuisance.” Compl. ¶ 82. This includes  
 6 “meeting the CDC and CDPH guidelines and other minimum public health standards necessary to stop”  
 7 or reduce the spread of COVID-19. Compl. ¶ 81. Plaintiff also seeks reimbursement for herself and  
 8 all members of her class for purchases of equipment such as hand sanitizer and masks, Compl. ¶ 104,  
 9 as well as “compensatory damages in an amount to be ascertained at trial,” Compl. at Prayer for Relief.  
 10 Plaintiff also seeks attorneys’ fees and costs. Compl. ¶ 90, 99, 107.

## 11                   II. GROUNDS FOR REMOVAL

12       6. Removal of this action is proper on two independent grounds. First, the Court may  
 13 exercise subject matter jurisdiction over this action under 28 U.S.C. § 1332(a) because there is  
 14 complete diversity between the parties and over \$75,000 is in controversy, exclusive of interest and  
 15 costs. Second, the Court may exercise subject matter jurisdiction over this action under 28 U.S.C.  
 16 § 1332(d) because the putative class contains at least 100 members, there is minimal diversity, and the  
 17 amount in controversy exceeds \$5 million, exclusive of interest and costs.

### 18                   A. The Court Has Traditional Diversity Jurisdiction.

19       7. Federal district courts may exercise jurisdiction over “all civil actions where the matter  
 20 in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between . . .  
 21 . citizens of different States.” 28 U.S.C. § 1332.

22       8. For purposes of diversity jurisdiction, an individual “is a citizen of the state in which  
 23 [s]he is domiciled.” *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001). “In a class  
 24 action, only the domicile of the class representative (plaintiff) is considered, rather than that of the class  
 25 members.” *Borges v. Archer-Daniels Midland Co.*, 909 F. Supp. 709, 713 (C.D. Cal. 1995).  
 26 Because Plaintiff alleges that she “is a resident of the County of Santa Barbara,” Compl. ¶ 12, she is a  
 27 citizen of California. *See Owens v. Huntling*, 115 F.2d 160, 162 (9th Cir. 1940) (holding that a person  
 28

1 is domiciled where he or she has established a “fixed habitation or abode in a particular place, and  
 2 [intends] to remain there permanently or indefinitely”).

3. A corporation such as UPS is “a citizen of every State and foreign state by which it has  
 4 been incorporated and of the State or foreign state where it has its principal place of business.” 28  
 5 U.S.C. § 1332(c)(1). UPS is an “Ohio corporation,” Compl. ¶ 13, with its headquarters and principal  
 6 place of business in Atlanta, Georgia. *See* Brass Decl. ¶ 4; *see also Hertz Corp. v. Friend*, 559 U.S.  
 7 77, 92–93 (2010) (a corporation’s principal place of business is “normally . . . where the corporation  
 8 maintains its headquarters”).

9. There is therefore complete diversity between the parties as Plaintiff is allegedly a  
 10 citizen of California and Defendant is a citizen of Ohio and Georgia.

11. Additionally, “the matter in controversy exceeds the sum or value of \$75,000, exclusive  
 12 of interest and costs.” 28 U.S.C. § 1332. Where, as here, the plaintiff seeks injunctive relief, “the  
 13 amount in controversy . . . may include ‘the cost of complying with an injunction . . . .’” *Chavez v.*  
 14 *JPMorgan Chase & Co.*, 888 F.3d 413, 416 (9th Cir. 2018) (*quoting Gonzales v. CarMax Auto*  
 15 *Superstores, LLC*, 840 F.3d 644, 648 (9th Cir. 2016)).

16. Conservatively, Plaintiff’s class includes at least 4,000 members, estimating 200-300  
 17 employees across nineteen UPS facilities. *See* Compl. ¶¶ 2 (alleging “at least nineteen” operating  
 18 facilities,” and “thousands of workers throughout California”), 48 (alleging “approximately 300  
 19 employees at the Santa Maria location”). Plaintiff seeks, among other things, an injunction “enjoining  
 20 UPS from continuing to engage in . . . the wrongful acts, omission, and practices alleged herein whose  
 21 commission and omission constitute a public nuisance. . . .” Compl. at Prayer for Relief. These acts  
 22 and omissions include “fail[ing] to provide sufficient PPE.” Compl. ¶ 55. Estimating for purposes of  
 23 removal only the cost of procuring “PPE” including “face shields, certain types of masks, and  
 24 impermeable gloves,” Compl. ¶ 47, at twenty dollars (\$20) per 4,000 workers, Plaintiff seeks an order  
 25 requiring UPS to expend at least \$80,000 on additional equipment. Thus, the cost of complying with  
 26 the injunctive relief related to “PPE” alone exceeds \$75,000. To the extent that Plaintiff’s Complaint  
 27 alleges supposed deficiencies in UPS’s facilities, including its ventilation systems, Compl. ¶ 55,  
 28

1 complying with any order requiring modification or other injunctive relief would be significantly more  
 2 costly.

3       13. The requirements for traditional diversity jurisdiction are therefore met. And because  
 4 UPS is neither incorporated in California nor maintains its principal place of business in California,  
 5 Compl. ¶ 7, it may remove this case based on the parties' complete diversity of citizenship. *See* 28  
 6 U.S.C. § 1441(b)(2).

7       **B. The Court Has Jurisdiction Under the Class Action Fairness Act.**

8       14. The Class Action Fairness Act ("CAFA") permits removal where: (1) The case is a  
 9 "civil action . . . and is a class action"; (2) the aggregate number of putative class members is 100 or  
 10 greater; (3) there is diversity of citizenship between one or more plaintiffs and one or more defendants;  
 11 and (4) the amount placed in controversy by the Complaint exceeds, in the aggregate, \$5 million,  
 12 exclusive of interest and costs. 28 U.S.C. § 1332(d). Each prerequisite is met here.

13       15. First, this case is a putative "class action" under CAFA because it was brought under a  
 14 state statute or rule, namely California Code of Civil Procedure Section 382, authorizing an action to  
 15 be brought by one or more representative persons as a class action. 28 U.S.C. § 1332(d); *see also*  
 16 Compl. ¶¶ 1 ("This is a putative class action . . . ."), 60 ("Plaintiff brings Causes of Action One through  
 17 Four as a class action on behalf of herself and all other similarly situated pursuant to Code of Civil  
 18 Procedure section 382.").

19       16. Second, the "number of members of all proposed plaintiff classes in the aggregate" is  
 20 far more "than 100." 28 U.S.C. § 1332(d). According to her Complaint, Plaintiff "is informed and  
 21 believes that the number of Proposed Class members in California exceeds 100." Compl. ¶ 64.  
 22 Plaintiff's proposed class includes "approximately 300 employees at the Santa Maria location,"  
 23 Compl. ¶ 48, and "thousands of workers throughout California" that UPS employs across "at least  
 24 nineteen" operating facilities, Compl. ¶ 2. Plaintiff alleges that UPS "has employed, and continues to  
 25 employ, Plaintiff and other members of the Proposed class throughout Defendant's California  
 26 locations, including at the Distribution Center where Plaintiff worked." Compl. ¶ 16.

27       17. Third, sufficient diversity exists. To satisfy CAFA's diversity requirement, the parties  
 28 need only be minimally diverse—that is, one putative class member must be a citizen of a state different

1 from that of one defendant. 28 U.S.C. § 1332(d)(2); *see also United Steel, Paper & Forestry, Rubber,*  
 2 *Mfg., Energy, Allied Indus. & Serv. Workers Int'l Union, AFL-CIO, CLC v. Shell Oil Co.*, 602 F.3d  
 3 1087, 1090–91 (9th Cir. 2010). The only named plaintiff, Ms. Hess, is a citizen of California. *See*  
 4 Compl. ¶ 12. The putative class also consists solely of “workers employed by United Parcel Service,  
 5 Inc., throughout California.” Compl. ¶ 61. UPS is a citizen of Ohio and Georgia. Brass Decl. ¶ 4.  
 6 Therefore, sufficient diversity exists under CAFA.<sup>1</sup>

7 18. Fourth, taking Plaintiff’s allegations as true, at least \$5,000,000 is in controversy. In  
 8 assessing CAFA’s amount-in-controversy requirement, “a court must assume that the allegations of the  
 9 complaint are true and assume that a jury will return a verdict for the plaintiff on all claims made in the  
 10 complaint. *Campbell v. Vitran Exp., Inc.*, 471 F. App’x 646, 648 (9th Cir. 2012); *see Greene v. Harley-*  
 11 *Davidson, Inc.*, 965 F.3d 767, 772 (9th Cir. 2020) (“To meet CAFA’s amount-in-controversy  
 12 requirement, a defendant needs to plausibly show that it is reasonably possible that the potential liability  
 13 exceeds \$5 million.”). Further, where attorneys’ fees are authorized by the underlying statutes, a court  
 14 also may “include[] attorneys’ fees” in assessing the amount in controversy. *Guglielmino v. McKee*  
 15 *Foods Corp.*, 506 F.3d 696, 700 (9th Cir. 2007); *see also Giannini v. Northwestern Mut. Life Ins. Co.*,  
 16 No. C 12-77 CW, 2012 WL 1535196, at \*4 (N.D. Cal. Apr. 30, 2012) (finding reasonable estimate of  
 17 future attorneys’ fees can be used in calculating the amount in controversy).

18 19. Plaintiff’s Third Cause of Action alleges that Plaintiff and Class members are entitled  
 19 to reimbursement for “necessary expenditures and losses . . . including but not limited to hand sanitizer  
 20 and masks.” Compl. ¶ 104. Plaintiff alleges that class members had to purchase their own supplies for  
 21 the duration of the pandemic, Compl. ¶¶ 57, 94, which she alleges began on March 4, 2020, in  
 22 California, Compl. ¶ 27, and continues to this day. Plaintiff’s allegation thus results in at least nine  
 23 months’ worth of reimbursements, assuming judgment were entered in her favor on the date of this  
 24 removal, January 7, 2021. Assuming \$20 worth of supplies per month multiplied by 4,000 potential  
 25 Class members, the Third Cause of Action, as alleged, could account for damages exceeding \$720,000.

26  
 27  
 28 <sup>1</sup> Because UPS is not a California citizen, the home-state exception to CAFA removal does not  
 apply. *See* 28 U.S.C. § 1332(d)(4).

1       20. Plaintiff's First Cause of Action alleges entitlement to "declaratory relief, injunctive  
 2 relief, and damages," as well as "interest, penalties, attorneys' fees and expenses." Compl. ¶ 90.  
 3 Injunctive relief includes "meeting the CDC and CDPH guidelines" related to COVID-19. *See* Compl.  
 4 ¶ 81–2 (alleging that UPS does not ensure CDC and CDPH guidelines are met, and that immediate  
 5 injunctive relief must be granted to forestall harm therefrom). Plaintiff's Complaint refers to  
 6 Cal/OSHA guidance for "enclosed spaces where physical distancing is difficult to maintain" that  
 7 includes: "physical or spatial barriers between workers, such as Plexiglass or other sturdy and  
 8 impermeable partitions;" "increasing the number of shifts to reduce the number of personnel present at  
 9 one time;" and "use of PPE such as face shields, certain types of masks, and impermeable gloves."  
 10 Compl. ¶ 47. Plaintiff alleges that UPS has failed to implement these guidelines. Compl. ¶ 55. Plaintiff  
 11 also alleges that UPS has failed to implement modifications to its ventilation and airflow in accordance  
 12 with guidelines. Compl. ¶¶ 50, 55.

13       21. Plaintiff alleges that her proposed injunctive relief would apply to at least 19 facilities  
 14 across California, as she asserts that UPS has "similarly failed to implement adequate safety protocols  
 15 and failed to provide a safe work environment throughout its facilities in California." Compl. ¶ 51.  
 16 Costs associated with enforcement of an injunction related to these supposed deficiencies in UPS's  
 17 facilities would be extensive. They could include hundreds, if not thousands, of feet of impermeable  
 18 barriers in areas where employees work closely together, other costly building modifications,  
 19 equipment for thousands of employees, as well as potential productivity losses due to decrease in labor  
 20 activity. With respect to Plaintiff's allegations regarding ventilation systems, the proposed injunctive  
 21 relief could result in hundreds of thousands of dollars in physical modifications at each location, not to  
 22 mention increased energy consumption. Multiplied by 19 facilities and "thousands" of employees,  
 23 Compl. ¶ 2, the cost of Plaintiff's sweeping proposed injunctive relief could easily exceed \$5 million.

24       22. Plaintiff's First and Third Causes of Action, even before accounting for potential  
 25 compensatory damages, allege well over \$5 million of potential costs to UPS. Plaintiff is also seeking  
 26 "reasonable attorneys' fees and costs." Compl. at Prayer for Relief. Using "25% as a benchmark" for  
 27 attorney's fees, *In re Hyundai & Kia Fuel Economy Litig.*, 926 F.3d 539, 570 (9th Cir. 2019), would  
 28 add at least another \$1.25 million to that amount. *See* Compl. ¶¶ 90, 99, 107, Prayer for Relief. This

1 total exceeds the statutory threshold and establishes “a plausible allegation that the amount in  
 2 controversy exceeds the jurisdictional threshold.” *Ibarra v. Manheim Invs., Inc.*, 775 F.3d 1193, 1195  
 3 (9th Cir. 2015) (quoting *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 89 (2014)).

4 **III. TIMELINESS OF REMOVAL**

5 23. Plaintiff served a copy of the Summons and Complaint on UPS on December 8, 2020.  
 6 Brass Decl. ¶ 3 & Ex. A. Because this Notice of Removal is filed within thirty days of service of the  
 7 Summons and Complaint, it is timely under 28 U.S.C. §§ 1446 & 1453. *See Murphy Bros., Inc. v.*  
 8 *Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347–48 (1999) (holding that a “defendant’s time to remove  
 9 is triggered by simultaneous service of the summons and complaint . . . , not by mere receipt of the  
 10 complaint unattended by any formal service”).

11 **IV. VENUE**

12 24. The United States District Court for the Northern District of California is the appropriate  
 13 venue for removal pursuant to 28 U.S.C. §1441(a) because it embraces the place where Plaintiff  
 14 originally filed the case, in the Superior Court of Alameda County. *See* 28 U.S.C. §§ 84(a), 1441(a).

15 **V. NOTICE**

16 25. UPS will promptly serve this Notice of Removal on Plaintiff and will promptly file a  
 17 copy of this Notice of Removal with the Clerk of the Superior Court of the State of California, County  
 18 of Alameda, in which the action is pending, as required under 28 U.S.C. § 1446(d).

19 26. Pursuant 28 U.S.C. § 1446(a), true and correct copies of all “process, pleadings, and  
 20 orders served” upon UPS as well as other documents filed in the state court action are filed concurrently  
 21 with this Notice of Removal as Exhibit A to the Brass Declaration.

22 **VI. CONCLUSION**

23 27. For the foregoing reasons, UPS respectfully submits that this action is properly removed  
 24 to this Court, and UPS respectfully requests that this Court proceed as if this case had been originally  
 25 filed in this Court. If any question arises as to the propriety of the removal of this action, UPS requests  
 26 the opportunity to present a brief and oral argument in support of its position that this case is subject to  
 27 removal.

1 Dated: January 6, 2021

2 RACHEL S. BRASS  
3 JOSEPH R. ROSE  
4 GIBSON, DUNN & CRUTCHER LLP

5  
6 By: /s/ Rachel S. Brass  
7 Rachel S. Brass

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Attorneys for Defendant UNITED PARCEL SERVICE,  
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